man shareholder in an English company during the war are has just been decided. In *Robson* v. *Premier Oil and Pipe Line Company, Ltd.*,[10] Lord Justice Pickford, who delivered the opinion for the Court of Appeals, holding that German shareholders have not the right to vote for directors of an English company, nor to exercise such a right by proxy. The court adopted the view of Professor Westlake,[11] who takes a middle-ground, holding that the shareholder continues to be a member of the company, but his rights and liabilities are suspended during the continuance of hostilities. This is essentially a compromise.

It is difficult to see how the exercise of the voting power by the shareholders in an English trading company may be detrimental to the interests of Great Britain or to the advantage of her enemies. While patriotism may be confined within the borders of one's native land, modern business does not know such narrow limitations. The network of commercial relations has become world-wide, and it is necessary, in order to maintain stability of credit, to afford foreign investors in time of peace such security as will encourage them to supply capital for extensive business enterprises. It would seem advisable, therefore, to refrain from interfering with international trade relationships, unless absolutely essential to safeguard the interests of the nation.

L. E. L.

LIBEL—PRIVILEGED COMMUNICATIONS—GRAND JURORS—The foundation for the immunity of privileged communications in slander and libel is public policy. Sometimes it is so much to the public interest that one should be able to speak one's mind freely, without fear of the consequences, that the law will excuse even intentionally and wilfully false and harmful statements concerning another. At other times, the interest of the public at large does not demand so sweeping an immunity, but requires merely that one be absolved from responsibility only so long as his statements are made in good faith, and without actual evil intent. In the former the immunity is absolute; in the latter it is qualified.

An important form of privilege is that accorded to persons taking part in the administration of justice. The exact extent of the privilege may vary according to the person who claims it and

[10] 113 L. T. Rep. 523 (Eng. 1915). In Rex v. London County Council, 113 L. T. Rep. 118 (1915), Lord Chief Justice Reading intimated that an alien enemy should not be allowed to vote by proxy on his shares in an English company. This opinion, which was merely *obiter dictum*, was put on the ground that the alien enemy did not have the capacity to give authority to a proxy in England.

[11] Westlake: "International Law," Part II, p. 53. See also Phillipson: "Effect of War on Contracts," p. 102.

the jurisdiction in which it is claimed, but it may be stated broadly that judges, parties, counsel and witnesses may not be sued for defamatory words uttered during the course of judicial proceedings.[1] So also it is held that whatever may be said by one juror to another in the jury room while the verdict is being considered, cannot be the subject of a civil action.[2]

It is also settled that presentments, indictments and reports made by a grand jury under the authority conferred upon that body by the law of the particular jurisdiction, cannot be the basis of a civil action.[3] This is so no matter how erroneous the act of the jury may be, or how malicious the motive which inspired it.[4] The acts of the grand jury in discharge of their duties are absolutely privileged. An interesting question arises, however, where the grand jury takes some action which is not authorized by the powers granted to it.

On this point there is a recent decision of the Court of Civil Appeals of Texas, which is of interest.[5] The grand jury, regularly impaneled for the purpose of discharging its ordinary duties, turned into court a written report of its findings, containing a statement that the sheriff of the county was guilty of immoral conduct unbecoming his office, but no indictment was presented against him. By the law of the state, such a proceeding was not a part of the duties of the grand jury. The sheriff sued the members of the grand jury for libel, but was met with a demurrer, which was sustained by the trial court on the ground that the report of the jury was a privileged communication, and could not be made the basis of a suit for libel. On appeal, however, it was held that the lower court had erred in sustaining the demurrer.

This case is similar to the earlier case of *Rector* v. *Smith*, decided in Iowa in 1860.[6] There it was expressly stated by the court that a grand jury's report which was unauthorized by law was not a privileged communication; but the actual decision was that as the grand juror who was sued asserted that he had acted without malice or ill-will toward the plaintiff, and in the belief

[1] Judges: Scott v. Stansfield, L. R. 3 Ex. 220 (Eng. 1868). Parties: McDavitt v. Boyer, 169 Ill. 475 (1897); Badgley v. Hedges, 2 N. J. L. 233 (1807). Counsel: Munster v. Lamb, 11 Q. B. D. 588 (Eng. 1883); Hollis v. Meux, 69 Cal. 625 (1886). Witnesses: Buchsbaum v. Heriot, 5 Ga. App. 521 (1908).

[2] Durham v. Powers, 42 Vt. 1 (1869).

[3] Sidener v. Russell, 34 Ill. App. 446 (1889); Fisk v. Soniat, 33 La. Ann. 1400 (1881).

[4] Turpen v. Booth, 56 Cal. 65 (1880); Hunter v. Mathis, 40 Ind. 356 (1872).

[5] Rich v. Eason, 180 S. W. 303 (Tex. 1915).

[6] 11 Ia. 302 (1860).

that the report was within the scope of his duty, he was not liable. This amounts, however, to holding that the report was qualifiedly privileged.[7]

The exact view of the court in the principal case[8] is difficult to ascertain. It does not appear whether the grand jury acted in good faith and without ill-will in making the objectionable report, and the court does not refer to that point. This would lead to the belief that the court deemed it unimportant, and meant to deny all privilege whatsoever, both absolute and qualified, in cases where a grand jury publishes a defamation outside the scope of its duties. On the other hand, the court quotes with approval the case of *Rector* v. *Smith*,[9] which would indicate that it merely refused to grant absolute privilege, and that it was assumed that the grand jury had acted with actual malice.

The reason that grand jurors are not liable for their words or acts, no matter what their motives, while acting as members of the grand jury within the legitimate scope of their duties, as stated by an early writer, is that "it would be of the utmost ill-consequence in any way to discourage them from making their inqurries with that freedom and readiness which the public good requires."[10] It would seem, however, that the same reasoning applies where the grand jury through a mistake as to its powers acts in a matter beyond its authority. Would not a contrary rule retard the administration of justice, which public policy most strongly requires to be unfettered and untrammelled? At least where they exceed their powers through an honest but erroneous conception of their duties, should not grand jurors be exempt from liability?

But does public policy demand an absolute immunity even where they knowingly exceed their authority? If grand jurors are perfectly aware that they are not empowered to take a certain action, but wilfully do so from some improper motive, it seems perfectly just to hold them liable. The difficulty, however, lies in the fact that it is necessary to ascertain the state of mind of the members of the grand jury, and to determine whether or not they acted knowingly and wilfully. As this would have to be passed upon

[7] That the court so meant to hold is further indicated by the fact that it quoted as follows from Bradley v. Heath, 12 Pick. 163 (Mass. 1831): "Where words imputing misconduct to another are spoken by one having a duty to perform, and the words are spoken in good faith, and in the belief that it comes within the discharge of that duty . . . no presumption of malice arises from the speaking of the words, and therefore no action can be maintained in such cases without proof of express malice." This is but a form of the rule of qualified privilege

[8] *Supra*, note 5.

[9] *Supra*, note 6.

[10] 1 Hawkins' P. C., ch. 73, sect. 10 (ed. 1777). See also *id.* ch. 72, sect. 5.

by another jury in the event of a grand juror being sued, grand jurors would perhaps be hampered by the fear that their motives, though entirely honest, might be misconstrued, with consequent liability to themselves. If their motives could be infallibly determined, they should be held to accountability; but inasmuch as this is not possible, it may be argued that they should be given absolute immunity.

It is not certain, however, that public policy requires so extensive a privilege. It may be that the public interest is sufficiently conserved by allowing grand jurors a qualified privilege where they mistakenly exceed their duties;[11] but it is submitted that at least a conditional immunity is imperative.[12]

E. E.

PROPERTY—TENANCY BY THE ENTIRETY—At common law, husband and wife did not take, under a conveyance of land to them jointly, as tenants in common or as joint tenants, but each became seized of the entirety, *per tout, et non per my;* the consequence of which was that neither could dispose of any parts without the assent of the other, but the whole remained to the survivor under the original grant.[1] They were said to take a tenancy by the entireties because there were no moieties between husband and wife. The reason for the rule was founded on the legal fiction of the unity of husband and wife.

As a result of the various married women's acts, the question soon arose as to whether this legislation had destroyed the legal unity of husband and wife. A few jurisdictions have taken the position that by these acts conferring upon married women the legal right to acquire property and to hold and enjoy it free from the husband's control, the rule that a conveyance to a husband and wife made them tenants by entirety ceased to exist.[2] But it is still the law in a majority of jurisdictions that regardless of the married women's acts, that where the conveyance is to husband and wife without any words prescribing, qualifying or characterizing

[11] This is no doubt the view of the court in Rector v. Smith (*supra*, note 6).

[12] The principal case, Rich v. Eason, *supra*, note 5, and Rector v. Smith, *supra*, note 6, are the only reported cases in which the exact point discussed is the subject of decision. The question is referred to *obiter* in Poston v. Washington, *etc.*, R. R. Co., 36 App. D. C. 359 (1911), and in Parsons v. Age-Herald Pub. Co., 181 Ala. 439 (1913). In the former case, there is a *dictum* that the grand jury has no protection at all against action if it exceeds its authority; in the latter case, no definite ruling is made as to the liability of the jurors themselves under such circumstances.

[1] 2 Blackstone 182; 2 Kents Comm. 113.

[2] Clark v. Clark, 56 N. H. 105 (1875); Hoffman v. Stigers, 28 Iowa 302 (1869).